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Held, that, while it would have been better to have used the word "reasonable" before "grounds," it was not affirmative error to modify the instruction by inserting the quoted words; it not appearing that defendant was prejudiced thereby.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. §§ 4221-4224; Dec. Dig. § 1064.* 6 Va.-W. Va. Enc. Dig. 103; 14 Va.-W. Va. Enc. Dig. 451.]

Error to Circuit Court, Wise County.

Action by M. D. Nidiffer against the North British & Mercantile Insurance Company. Judgment for plaintiff, and defendant brings error. Affirmed.

Bond & Bruce and *Geo. W. St. Clair*, for plaintiff in error.
W. S. Cox and *Morton & Parker*, for defendant in error.

HOWARD et al. *v.* HOWARD et al.

Sept. 14, 1911.

[72 S. E. 133.]

1. Evidence (§ 63*)—Presumption of Sanity.—All men are presumed of sound mind; the burden being upon one asserting it to show the contrary.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. § 83; Dec. Dig. § 63.* 7 Va.-W. Va. Enc. Dig. 680.]

2. Deeds (§ 72*)—Undue Influence.—The undue influence sufficient to set aside a deed must destroy the grantor's free will in executing it.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. §§ 190-199; Dec. Dig. § 72.* 13 Va.-W. Va. Enc. Dig. 386; 14 id. 1038.]

3. Deeds (§ 196*)—Undue Influence—Burden of Proof.—The burden of showing such undue influence as will avoid a deed is upon the person asserting it.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. § 1588; Dec. Dig. § 196.* 13 Va.-W. Va. Enc. Dig. 394; 14 id. 1040.]

4. Deeds (§ 211*)—Undue Influence—Sufficiency of Evidence.—Evidence held not to show undue influence in the execution of a deed.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. § 641; Dec. Dig. § 211.* 13 Va.-W. Va. Enc. Dig. 391.]

5. Deeds (§ 211*)—Mental Capacity—Sufficiency of Evidence.—Evidence held not to show that a grantor was mentally unsound when he executed the deed.

[Ed. Note.—For other cases, see Deeds, Cent. Dig., §§ 638-640; Dec. Dig. § 211.* 4 Va.-W. Va. Enc. Dig. 380.]

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

6. Evidence (§ 568*)—Opinions—Mental Capacity—Weight.—The evidence of witnesses present when a deed was executed is more reliable in proving mental incapacity than the opinion of witnesses based on facts which may not result from mental unsoundness.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. § 2394; Dec. Dig. § 568.* 4 Va.-W. Va. Enc. Dig. 380.]

7. Deeds (§ 68*)—Capacity of Grantor—Old Age.—The law prescribes no age limit beyond which one is incapacitated from executing a valid deed.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. §§ 149-155; Dec. Dig. § 68.* 4 Va.-W. Va. Enc. Dig. 379; 7 id. 675.]

8. Wills (§ 47*)—Testamentary Capacity—Senile Failure of Memory.—Testamentary capacity is not destroyed by failure of memory incident to old age.

[Ed. Note.—For other cases, see Wills, Cent. Dig. § 94; Dec. Dig. § 47.* 13 Va.-W. Va. Enc. Dig. 711.]

9. Deeds (§ 68*)—Capacity of Grantor.—A deed executed by a grantor of legally sound mind will not be set aside because the disposition of property made therein is unwise.

[Ed. Note.—For other cases, see Deeds, Dec. Dig. § 68.* 13 Va.-W. Va. Enc. Dig. 391.]

10. The fact that the grantor had executed a will prior to the deed and inconsistent therewith, which was not destroyed, such will also bequeathing other property, does not affect the validity of the deed.

Appeal from Circuit Court, Russell County.

Suit by W. N. Howard and others against Joseph Howard and others to set aside a deed. From a decree for complainants, defendants appeal. Reversed, and bill dismissed.

H. A. Routh and J. C. Gent, for appellants.

Finney & Wilson, for appellees.

WAMPLER v. HARRELL et al.

Sept. 14, 1911.

[72 S. E. 135.]

1. Deeds (§ 211*)—Undue Influence—Sufficiency of Evidence.—Evidence held not to show undue influence in the execution of a deed to the grantor's nephew.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. § 641; Dec. Dig. § 211.* 13 Va.-W. Va. Enc. Dig. 389.]

2. Judgment (§ 708*)—Conclusiveness—Persons Concluded.—In an

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.